

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ROBERT J. MARSHALL,)
)
Petitioner,)
)
v.) No. 4:13CV01748 ERW
)
UNITED STATES OF AMERICA,)
)
Respondent.)

MEMORANDUM AND ORDER

Robert Marshall is serving a 100-month sentence for aggravated identity theft. United States v. Marshall, 4:07CR35 ERW (E.D. Mo.). His first motion to vacate under 28 U.S.C. § 2255 was denied. Marshall v. United States, 4:07CV1877 ERW (E.D. Mo.). And his subsequent attempt to challenge his conviction through a § 2241 habeas action and a successive § 2255 action based on Flores-Figueroa v. United States, 556 U.S. 646 (2009), was denied by the United States Court of Appeals for the Eighth Circuit. Marshall v. United States, No. 1355 (8th Cir. July 29, 2011). Before the Court is Marshall's motion for relief from his criminal judgment under Rule 60(b) of the Federal Rules of Civil Procedure, which is based on Flores-Figueroa.

Rule 60(b) provides for relief from final judgments in civil cases. Rule 60(b) does not provide a basis for relief from judgment in a criminal case. E.g., United States v. O'Keefe, 169 F.3d 281, 289 (5th Cir. 1999); see Fed. R. Civ. P. 1 (defining the scope

of the rules as applying to “all civil actions and proceedings in the United States district courts”). As a result, Marshall’s Rule 60(b) motion cannot be used to challenge his underlying criminal conviction and sentence. Instead, the appropriate statutory vehicle for postconviction relief is found in 28 U.S.C. § 2255.

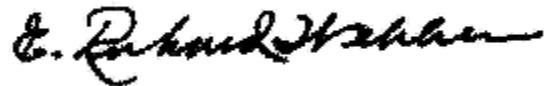
Accordingly,

IT IS HEREBY ORDERED that petitioner’s motion for leave to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED**.

An Order of Dismissal will be filed contemporaneously.

So Ordered this 9th day of September, 2013.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE